

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DR. THOMAS YAMASHITA, an individual;  
SUNBURST PLANT DISEASE CLINIC,  
INC., a California Corporation,

Plaintiffs,

v.

WILBUR-ELLIS COMPANY, a California  
Corporation; HUGHSON CHEMICAL  
COMPANY, LLC, a California Limited  
Liability Company,

Defendants.

No. C 06-01690 WHA

**ORDER DENYING  
PLAINTIFFS' MOTION  
FOR A PRELIMINARY  
INJUNCTION AND  
DENYING WILBUR-ELLIS'  
MOTION FOR SANCTIONS**

**INTRODUCTION**

In this patent-infringement action, plaintiffs Dr. Thomas Yamashita and Sunburst Plant Disease Clinic, Inc. move for a preliminary injunction and defendant Wilbur-Ellis cross-moves for sanctions. This order finds that plaintiffs have not satisfied any of the factors necessary for imposition of a preliminary injunction. This order, therefore, **DENIES** plaintiffs' motion. Wilbur-Ellis' motion for sanctions, however, is **DENIED**.

**STATEMENT**

Plant fertilizers are not new. "[T]hey have been around for hundreds of years, including the use of carbon-based fertilizers as exemplified by the use of organic matter such as humus

1 and manure in the 19th century. The ancient use included the addition of macronutrients,  
 2 including nitrogen and phosphorous” (Lovatt Decl. ¶ 10). “An early example is the classic  
 3 story of Squanto teaching the Pilgrims ‘to heap the earth into low mounds with several seeds  
 4 and fish in each mound.’ The decaying fish, a carbon/skeletal energy source rich in  
 5 macronutrients, as well as vitamins, fertilized the corn.”

6 According to plaintiffs Dr. Yamashita and his company Sunburst, “[t]raditional plant  
 7 nutrition and fertilizer products to date have mostly been limited to supplying a plant with a  
 8 specific mineral or specific nutrient” (Compl. ¶ 14). In purported contrast, “Dr. Yamashita’s  
 9 approach improves the application of nutrients and energy sources to plants by creating a more  
 10 perfect balance of nutrients and carbon energy source in consideration of the highly variable  
 11 factors affecting each specific plant or crop” (*Id.* at ¶ 15).

12 Dr. Yamashita is the holder of the three patents in suit, which described his  
 13 “technology” of “compensatory balanced nutrition.” The parent patent, United States Patent  
 14 No. 5,549,729 (“the ’729 patent”), was issued on August 27, 1996. Plaintiff subsequently  
 15 secured two continuations of the ’729 patent, United States Patent No. 5,797,976 (“the ’976  
 16 patent”) and United States Patent No. 6,309,440 (“the ’440 patent”).

17 Plaintiffs’ instant motion for a preliminary injunction focuses on two claims from the  
 18 ’440 patent, issued October 30, 2001. That continuation patent has a remaining duration of two  
 19 years. The ’440 patent described a “method and composition for promoting and controlling  
 20 growth of plants.” Claim 1 of the ’440 patent read (col. 45, lines 2–21):

21 1. An aqueous composition comprising:

22 (a) a carbon skeleton/energy component selected from the group  
 23 consisting of mannose, lactose, dextrose, arylthrose, fructose,  
 24 fucose, galactose, glucose, gulose, maltose, raffinose, ribose,  
 25 ribulose, rutinose, saccharose, stachyose, trehalose, xylose,  
 26 xylulose, fructose-p, galactose-p, glucose-p, lactose-p, maltose-p,  
 27 mannose-p, ribose-p, xylose-p, xylulose-p, deoxyribose, adonitol,  
 28 galactitol, glucitol, matitol, mannitol, mannitol-p, ribitol, sorbitol,  
 sorbitol-p, xylitol and mixtures thereof;

(b) a macronutrient component comprising a water soluble  
 nitrogen source and a water soluble phosphorous source;

(c) a vitamin/cofactor source,

the carbon skeleton/energy component, the macronutrient component and vitamin/cofactor in relative amounts effective for stimulating the growth of plants.

Claim 2 of the '440 patent stated (col. 45, lines 22–24) (emphasis in original):

2. The composition according to claim 1 wherein said macronutrient component further comprises a water soluble potassium source and calcium source.

These claims thus required four elements: (1) a carbon skeleton/energy component, (2) a macronutrient component, (3) a vitamin/cofactor, and (4) a composition of the three preceding elements in relative amounts “effective for stimulation of plant growth.”

The specification of the '440 patent provided examples of the ingredients, proportions, and process for obtaining a fertilizer with the above elements. For instance, in “Example 1” “[s]ugar beet molasses was used as stock material and source of energy and carbon skeleton” (col. 2, lines 65–66). The following “mixing instructions” were given (col. 3, line 60–col. 4, line 9):

While under rapid mechanical or hydraulic agitation, water and two thirds of the total molasses volume are mixed. The amount of added water should represent approximately 15% of the molasses volume. Ingredients are then slowly metered into the batch in the following order:

1. Citric Acid
2. Katy-J Complexing Agent
3. Phosphoric Acid
4. Nitrogen
5. Potassium
6. Micronutrients (separately)
7. Vitamins and cofactors
8. Seaweed Extract
9. Xanthan gum

Sunburst has manufactured, marketed and sold fertilizers utilizing the methods described in the '440 patent from 1985 up to the present. From 1998–2002, defendant Hughson Chemical Company, LLC was one of several companies distributing Sunburst’s product to farmers, primarily in the San Joaquin Valley of California. According to plaintiffs, Hughson’s regional manager, Howard Barnett, approached Dr. Yamashita about securing a license to manufacture and sell the Sunburst fertilizer under Hughson’s name in late 2002, apparently under a threat by Barnett to manufacture an identical product if Dr. Yamashita refused. When Dr. Yamashita

1 denied the request, Hughson apparently ended its relationship with Sunburst. Plaintiffs contend  
2 that shortly thereafter, Hughson began manufacturing and selling an identical composition,  
3 allegedly copied from plaintiffs' product. According to plaintiffs, Hughson produced two  
4 infringing products called "K-Source" and "Nutra Pak." Plaintiffs allege that Hughson's sales  
5 representatives instructed farmers how to combine the two products to create a formulation that  
6 amounted to an identical product to Sunburst's fertilizer. In October 2003, plaintiffs, through  
7 counsel, sent Hughson a cease-and-desist letter.

8 In 2004, defendant Wilbur-Ellis Company acquired Hughson, although the nature of this  
9 acquisition is unclear. At the initial hearing for the instant motion, Wilbur-Ellis' counsel  
10 emphasized that she does not represent Hughson and that Wilbur-Ellis merely acquired the  
11 *assets* of Hughson without acquiring Hughson itself. Put differently, Hughson is merely a shell  
12 unaffiliated with Wilbur-Ellis. Plaintiffs counter that Hughson's operations continue as a  
13 branch of Wilbur-Ellis. This order, however, need not resolve this question. The bottom line is  
14 that plaintiffs allege that Wilbur-Ellis (via whatever branch) continues to manufacture K-Source  
15 and Nutra Pak. Plaintiffs argue that Wilbur-Ellis has induced and continues to induce  
16 infringement by selling these two products together and instructing farmers how to combine  
17 them to create a product which infringes the '440 patent.

18 Plaintiffs filed suit on March 6, 2006, alleging infringement, unfair competition under  
19 California Business and Professions Code § 17200, intentional interference with contract, and  
20 intentional interference with prospective economic advantage. On March 14, plaintiffs brought  
21 the instant motion for a preliminary injunction. An order dated March 28, 2006 granted  
22 expedited discovery.

23 Plaintiffs argue that Wilbur-Ellis has recently ratcheted up its production of K-Source  
24 and Nutra Pak. Moreover, plaintiffs present results from recent forensic tests comparing the  
25 chemical composition of Sunburst's fertilizer to samples of the K-Source/Nutra Pak  
26 combination. The results ostensibly show chemical equivalence. Wilbur-Ellis disputes the  
27 viability of the samples used for plaintiffs' tests and the results thereof and provides testing of  
28 its own which contradicts plaintiffs' results. The parties also present competing botany and

1 agronomy experts to discuss the validity of the '440 patent and compare it with the prior art.  
 2 Wilbur-Ellis has filed a cross-motion for sanctions.

### 3 ANALYSIS

4 This order finds that plaintiffs have not satisfied the four factors for a preliminary  
 5 injunction. Wilbur-Ellis, however, is not entitled to sanctions for plaintiffs' motion.

#### 6 1. PRELIMINARY INJUNCTION.

7 "A preliminary injunction is a 'drastic and extraordinary remedy that is not to be  
 8 routinely granted.'" *National Steel Car, Ltd. v. Canadian P. Ry., Ltd.*, 357 F.3d 1319, 1324  
 9 (Fed. Cir. 2004) (*quoting Intel Corp. v. ULSI Sys. Tech., Inc.*, 995 F.2d 1566, 1568  
 10 (Fed. Cir.1993)). A patentee seeking a preliminary injunction must establish: "(1) a reasonable  
 11 likelihood of success on the merits; (2) irreparable harm if an injunction is not granted; (3) a  
 12 balance of hardships tipping in its favor; and (4) the injunction's favorable impact on the public  
 13 interest." *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir.  
 14 2001). In order to demonstrate a reasonable likelihood of success, the patentee must show that  
 15 it will likely prove infringement and that its patent will likely withstand the defendant's  
 16 challenges to validity and enforceability.

#### 17 A. LIKELIHOOD OF SUCCESS ON THE MERITS.

18 Plaintiffs have not met their burden on the first factor of likelihood of success. They  
 19 have not shown that its infringement claim will likely withstand Wilbur-Ellis' invalidity attack.  
 20 While a defendant bears the ultimate burden of proving invalidity and unenforceability, on a  
 21 preliminary-injunction motion the movants must show that the asserted invalidity challenge  
 22 "lacks substantial merit." *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359,  
 23 1366 (Fed. Cir. 2001). Plaintiffs "need not establish the validity of a patent beyond question.  
 24 The patentee must, however, present a *clear case* supporting the validity of the patent in suit."  
 25 *Amazon.com*, 239 F.3d at 1359 (emphasis added). In other words:

26 . . . '[v]ulnerability is the issue at the preliminary injunction stage,  
 27 while validity is the issue at trial. The showing of a substantial  
 28 question as to invalidity thus requires less proof than the clear and  
 convincing showing necessary to establish invalidity itself" at  
 trial.

1 *National Steel Car*, 357 F.3d at 1335 (internal citation omitted).

2 Here, Wilbur-Ellis has presented a compelling argument that the '440 patent was  
 3 anticipated by the prior art and is thus invalid. Defendants have shown that a patent issued  
 4 years before the patents in suit which can reasonably be viewed as having described the same  
 5 "technology." United States Patent No. 4, 383,845 ("the '845 patent"), issued in 1983, taught of  
 6 "a foliar growth promoting mixture for increasing crop yield" (Lovatt Decl. ¶ 3). That earlier  
 7 patent described a liquid seaweed extract which "provides substantially all of the known  
 8 elements essential to the growth of plants." Accordingly, defense botany expert Dr. Carol J.  
 9 Lovatt explained that every element of claims 1 and 2 of the '440 patent were disclosed nearly  
 10 twenty years before in the '845 patent (*id.* at ¶¶ 4–5).

11 Of course, "[a] determination that a claim is invalid as being anticipated or lacking  
 12 novelty under 35 U.S.C. § 102 requires a finding that 'each and every limitation is found either  
 13 expressly or inherently in a single prior art reference.'" *Oakley, Inc. v. Sunglass Hut Int'l*, 316  
 14 F.3d 1331, 1339 (Fed. Cir. 2003).

15 Relying on this rule, plaintiffs counter that two related features of the '440 patent were  
 16 missing from the '845 patent. Plaintiffs argue that the composition in Dr. Yamashita's patent is  
 17 "entirely water soluble" and an "absorbable solution" while the '845 patent only contained  
 18 "some water soluble elements" and that it did not describe an absorbable solution.

19 The prior art patent did contain one claim describing all liquid elements ('845 patent,  
 20 col. 9, lines 28–48):

21 1. A foliar growth promoting mixture, including:

22 (a) a liquid seaweed base mixture forming approximately 50.0%  
 23 by weight of said foliar growth promoting mixture;

24 (b) a fish emulsion mixture forming approximately 25.0% by  
 weight of said foliar growth promoting mixture;

25 (c) a liquid humus mixture forming a predetermined weight  
 26 percentage within the approximate range of 5.0%-15.0% by  
 27 weight of the said foliar growth promoting mixture, said liquid  
 humus mixture being a combination of peat humus and aqueous  
 solution of ammonia; and,

28 (d) a water soluble nutrient mixture having a predetermined  
 weight percentage within the approximate range of 10.0%-20.0%

1 of said foliar growth promoting mixture, said soluble nutrient  
2 mixture from the group consisting of carbohydrates and enzymes.

3 2. The foliar growth promoting mixture as recited in claim 1  
4 where said fish emulsion mixture is hydrolyzed.

5 Claim 1 of the '845 patent described a fertilizer containing all liquid elements except for the  
6 fish-emulsion mixture. Claim 2 of that patent, in turn, described an invention in which  
7 everything else about claim 1 stayed the same except that the fish-emulsion mixture was  
8 "hydrolyzed," suggesting that the patent contemplated a composition of all liquid ingredients.

9 At oral argument, plaintiffs' counsel explained that the liquid humus and the hydrolyzed  
10 fish-emulsion mixture were merely suspension liquids, rather than absorbable solutions. This  
11 difference, counsel argued, has a significant impact on how readily a plant can absorb the  
12 composition.

13 Wilbur-Ellis' counter-argument at the hearing was more persuasive. Wilbur-Ellis  
14 correctly emphasized that the '440 patent did not claim a composition that was "absorbable."  
15 Rather, the '440 patent only required that the composition be "effective for stimulating the  
16 growth of plants" (col. 45, lines 20–21). Likewise, the '440 patent did not actually claim an  
17 aqueous "solution." Instead, the patent described an aqueous "composition" (col. 45, line 2).  
18 Although Dr. Yamashita now makes a declaration to the contrary, there was nothing in the '440  
19 patent clearly limiting the elements of the claims to non-suspension liquids. Nothing rules out  
20 the liquid humus and hydrolyzed fish-emulsion mixture described in the '845 patent as plausible  
21 components of an aqueous composition effective for stimulating the growth of plants. Where a  
22 prior art patent contains every limitation of the patent in suit, *either explicitly or inherently*, the  
23 later patent will be found invalid. *Oakley*, 316 F.3d at 1339.

24 The parties also dispute the extent to which the '845 patent was "considered" by the  
25 United States Patent and Trademark Office when it granted Dr. Yamashita's patents. Plaintiffs  
26 contend that they disclosed the earlier patent with their application, although they concede that  
27 the patent examiner made no reference to the '845 or its bearing on the patents in suit. Plaintiffs  
28 maintain that we must assume that the patent examiner did her job and analyzed the prior art,  
citing *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 939 (Fed. Cir. 1990) for this



proposition. Plaintiffs, however, do not provide any authority suggesting that simply because they disclosed the earlier patent in their application, that the later patent is immune from an attack of anticipation.

Of course, at this juncture in the litigation a final assessment of the validity of the patents in suit is not necessary. It is sufficient to say that the patents in suit are at least “vulnerable” to a challenge on invalidity grounds. *National Steel Car*, 357 F.3d at 1335.<sup>1</sup> This vulnerability prevents this order from delving into the merits of the competing forensic tests. This order also need not address whether Barnett’s purported threats are attributable to Wilbur-Ellis and whether they show wilful infringement. Plaintiffs have not survived this threshold attack on validity for purposes of showing a likelihood of succeeding on the merits.

#### **B. IRREPARABLE HARM.**

Wilbur-Ellis’ invalidity challenge is a sufficient ground to deny plaintiffs’ motion. As an alternative ground for denial of plaintiffs’ motion, however, this order finds that plaintiffs have not satisfied the remaining factors for a preliminary injunction of irreparable harm, balance of hardships and public interest. Plaintiffs at best have offered conclusory statements that their business has been harmed. They have not backed those conclusions up with sufficient data and facts to justify the extraordinary relief of a preliminary injunction.

Plaintiffs are not entitled to a presumption of irreparable harm where, as here, they have not demonstrated a likelihood of success on the merits. *See High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 49 F.3d 1551, 1556 (Fed. Cir.1995).

Plaintiffs contend that the irreparable harm they suffer is the “loss of business opportunity” and “loss of profits” from Wilbur-Ellis’ sale of infringing goods. *Atlas Powder Co. v. Ireco Chems.*, 773 F.2d 1230, 1232 (Fed. Cir. 1985). Plaintiffs argue that every day they are losing a foothold in the market for agricultural products in California. Plaintiffs contend

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<sup>1</sup> Wilbur-Ellis also attacks the ’440 patent on grounds that several key terms in that patent are ambiguous and thus fatally indefinite. An initial step of a validity analysis requires a court to construe the claims. *Oakley*, 316 F.3d at 1339. This order can reach the invalidity question by relying on plaintiffs’ apparent contention that the words should all be given their plain meaning without giving a final decision as to the accuracy of this proposed claim construction. Needless to say, certain terms in the patent may need be construed at a later date and possibly will received narrowed constructions different from the proposed construction.



1 that this is exacerbated by the fact that they do not license their products to other companies. If  
2 other companies are able to use Dr. Yamashita's ideas, it is argued, plaintiffs are left unable to  
3 compete.

4 These arguments, however, clash with Dr. Yamashita's sworn statements about the  
5 growth of Sunburst during the very period which plaintiffs claim the infringing products have  
6 been on the market. According to Dr. Yamashita, his business was also "substantially impaired  
7 by the events of September 11, 2001" (Yamshita Decl. ¶ 22). "Nevertheless, during 2004 and  
8 2005, we have continued to invest substantially in the business, *increasing manufacturing*  
9 *capacity, purchasing heavy equipment and hiring additional employees*" (*ibid.*) (emphasis  
10 added). Dr. Yamshita adds "[a]fter many years, our products are just now gaining prominence  
11 in the industry and our reputation has soared."

12 In contrast, the primary evidence that Wilbur-Ellis has been ramping up production of  
13 the K-Source/Nutra Pak combination is the following (*id.* at ¶ 24):

14 Within the past four weeks, I learned that defendants have  
15 dramatically increased their capacity to manufacture and sell even  
16 greater quantities of its infringing products, as is evidenced by the  
17 increasing number of large storage containers publicly viewable  
18 on their facilities. Clearly defendants are gearing up to compete  
19 on a larger scale and preparing to go after even greater market  
20 share beyond those farmer customers they previously were able to  
21 switch to their infringing products.

22 At oral argument, plaintiffs' counsel retreated from this argument with respect to the large  
23 containers, which a defense witness apparently testified were present for *over six years*. Even  
24 as to the proliferation of small containers supposedly viewed by Dr. Yamashita, increased  
25 production of the K-Source/Nutra Pak combination is not the most plausible inference. As  
26 plaintiffs repeat many times, Wilbur-Ellis is a large corporation with numerous products. These  
27 storage containers could be used for any one of Wilbur-Ellis' products, not just for those  
28 products purportedly infringing Dr. Yamshita's patents.

There is thus little except plaintiffs' desire to exclude Wilbur-Ellis from the market  
underlying plaintiffs' claim of irreparable harm. As the Federal Circuit noted:

[I]f the right to exclude during the litigation period alone  
established irreparable harm, the presumption of irreparable harm  
stemming from a finding of likely success could never be

1 rebutted, for every patentee whose motion for a preliminary  
2 injunction is denied loses the right to exclude an accused infringer  
from the market place pending the trial.

3 *Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1559 (Fed. Cir. 1994).

4 In addition, plaintiffs' delay in seeking the instant injunction weighs against a finding of  
5 irreparable harm. In certain limited circumstances, delay will rebut even a presumption of  
6 irreparable harm:

7 The failure to bring suit against other potential infringers may be  
8 relevant to an analysis of irreparable harm, but only when it  
9 indicates unreasonable delay in bringing suit, willingness to  
accept royalty-type damages in lieu of market exclusivity, or  
indifference in enforcing one's patent.

10 *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 976 (Fed. Cir. 1996).

11 Plaintiffs conduct here "indicates unreasonable delay in bringing suit." Plaintiffs  
12 admittedly have known since 2003 that Hughson Chemical (and eventually Wilbur-Ellis) were  
13 selling the purportedly infringing combination. Plaintiffs argue that the delay is justified  
14 because they needed to investigate the claims, because they were trying to informally resolve  
15 the situation, and because they lacked resources for protracted litigation due to capital  
16 expenditures during the time in question (Br. 21). Plaintiffs rely on *Hybritech Inc. v. Abbott*  
17 *Labs.*, 849 F.2d 1446, 1457 (Fed. Cir. 1988), for the proposition that lack of financial resources  
18 can justify delay. Plaintiffs also cite several district court opinions that have found various  
19 situations such as pending negotiations and infringement investigation to justify delays of up to  
20 two years. *See, e.g., eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1068 (N.D. Cal.  
21 2000); *Henkel Corp. v. Coral, Inc.*, 754 F. Supp. 1280, 1309 (N.D. Ill. 1990).

22 Yet at most the cases plaintiffs cite stand for the fact that delay does not rule out a  
23 finding of irreparable harm as a matter of law. *See Hybritech*, 849 F.2d at 1457. The fact that  
24 plaintiffs took three years to institute this action is at least a persuasive consideration regardless  
25 of the purported justifications. The fact that plaintiffs lacked money to pursue litigation is  
26 dubious at best because they were ramping up expenditure in their business during the same  
27 time period. A company afraid of infringing competitors could be reasonably expected to  
28 eliminate infringement before going full boar into that very market. Likewise, although

1 plaintiffs claim they needed to do investigation, it does not seem that they have acquired any  
2 new evidence of infringement over the past years, except the errant and preposterous conclusion  
3 about Wilbur-Ellis' increased storage tanks. The results for plaintiffs' forensic tests were not  
4 obtained until *after* they initiated this lawsuit. Finally, it seems that plaintiffs' supposed  
5 negotiations with Wilbur-Ellis took the form of repeated demands to cease and desist. That is  
6 not the type of negotiation apt to bear fruit worth delaying litigation for three years.

7 Finally, it appears that plaintiffs have an adequate remedy in the form of monetary  
8 damages. Where monetary damages can compensate a plaintiff in the event of an ultimate  
9 finding of infringement, there is insufficient harm to justify a preliminary injunction. *Eli Lilly*  
10 *and Co. v. Am. Cyanamid Co.*, 82 F.3d 1568, 1578 (Fed. Cir. 1996).

11 Plaintiffs counter that the loss in exclusivity for even one growing season will weaken  
12 their market share and reputation. Yet again, this is rebutted by the fact that Dr. Yamashita  
13 testified that plaintiffs' prominence in the market has been *increasing* during the time of the  
14 purported infringement. By this measure, if the alleged infringement continues and is  
15 ultimately proved by plaintiffs, they will be able to receive monetary compensation sufficient to  
16 compensate for any lost customers and still not suffer a loss in market share.

17 **C. BALANCE OF HARDSHIPS.**

18 Plaintiffs argue that the balance of hardships favors them because of the potential for  
19 disruption to their business. In contrast, according to plaintiffs, Wilbur-Ellis' business will not  
20 be threatened by a permanent injunction given that it "is a large, global company with numerous  
21 product lines" (Br. 23). Finally, plaintiffs point to authorities that suggest that the balance  
22 should tip especially in plaintiffs' favor given that the '440 patent is near the end of its term.  
23 *See Atlas Powder*, 111 F.2d at 1232; *S.C. Johnson, Inc. v. Carter-Wallace, Inc.*, Case No. 81  
24 Civ. 1081, 1985 WL 501 (S.D.N.Y Mar. 29, 1985).

25 As noted, however, plaintiffs simply have not demonstrated that the purported  
26 infringement has been disruptive to their business. On the contrary, plaintiffs arguably suffered  
27 greater economic turmoil as a result of the September 11 terrorist attacks than as a result of the  
28 supposed infringement. According to Dr. Yamashita himself, plaintiffs' business has grown in

the midst of the infringement. The mere fact that Wilbur-Ellis is a large corporation that could bear the loss of one of its numerous product lines does not mean that we must automatically find the hardships tip in favor of plaintiffs.

#### **D. PUBLIC INTEREST.**

Plaintiffs cite *Augat, Inc. v. John Mezzalingua Associates, Inc.*, 642 F. Supp. 506, 509 (N.D.N.Y. 1986), for the proposition that “[t]he public interest in a patent case is strongly weighted toward protecting the rights of patent holders.” The Supreme Court, however, made clear long ago that “the equities of the licensor do not weigh very heavily when they are balanced against the important public interest in permitting full and free competition in the use of ideas which are in reality a part of the public domain.” *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969). Accordingly, “although there exists a public interest in protecting rights secured by valid patents, the focus of the district court’s public interest analysis should be whether there exists some critical public interest that would be injured by the grant of preliminary relief.” *Hybritech*, 849 F.2d at 1458.

Plaintiffs argue that there is “a strong public interest in protecting California’s farmers, and ensuring that they are not receiving inferior products from infringers” (Reply Br. 15–16). Plaintiffs, however, also allege that the combination of K-Source and Nutra Pak “copies” the composition in Sunburst’s fertilizers. It is thus difficult to see how California’s farmers are being deceived if plaintiffs’ allegations are true. On the contrary, the interest of the farmers seems better served by having access to competitive products, being able to determine which products better suit their needs, and receiving reduced prices due to the availability of competing products.<sup>2</sup>

#### **2. SANCTIONS.**

Wilbur-Ellis cross-moves for sanctions arguing that plaintiffs have been less than forthcoming in producing responsive discovery for purposes of the motion for a preliminary injunction. Wilbur-Ellis contends that plaintiffs have had documents responsive to Wilbur-

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<sup>2</sup> Plaintiffs move to strike the declaration of Dr. Arnold J. Bloom. As this order does not rely on that declaration, this order need not rule on this evidentiary motion.

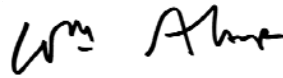
1 Ellis' requests, but have refused or delayed in producing them. While nothing described in  
2 Wilbur-Ellis's cross-motion rises to the level of sanctionable conduct, the Court will be mindful  
3 of plaintiffs' conduct during discovery proceedings in this matter. For now, it is sufficient to  
4 rule that plaintiffs have not satisfied the requirements for a preliminary injunction.

5 **CONCLUSION**

6 For the foregoing reasons, plaintiffs' motion for a preliminary injunction is **DENIED** and  
7 Wilbur-Ellis' motion for sanctions is **DENIED**.

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9 **IT IS SO ORDERED.**

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11 Dated: May 11, 2006



12 WILLIAM ALSUP  
13 UNITED STATES DISTRICT JUDGE  
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